

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARK SATTERLY, <i>et al.</i> ,	:	
Plaintiffs,	:	
v.	:	Case No. 3:19-cv-32
AIRSTREAM, INC.,	:	JUDGE WALTER H. RICE
Defendant.	:	

DECISION AND ENTRY SUSTAINING DEFENDANT AIRSTREAM'S
UNOPPOSED MOTION TO STRIKE PLAINTIFFS' NOTICE OF
SUPPLEMENTAL WITNESS STATEMENTS AND ACCOMPANYING
WITNESS STATEMENTS (DOC. #66) TO THE EXTENT IT ASKS, IN
THE ALTERNATIVE, FOR THE COURT TO DISREGARD PLAINTIFFS'
NOTICE

On May 29, 2019, Plaintiffs filed their Motion to Certify Rule 23 Class, Doc. #53. Defendant filed its Response on June 19, 2019, Doc. #61. Later that same evening, Plaintiffs filed a Notice of Supplemental Witness Statements in Support of their Motion to Certify Rule 23 Class, Doc. #62, attaching Declarations of Matthew Godsey, Sandra Funk and Chris Compton.


Airstream has filed a Motion to Strike Plaintiffs' Notice of Supplemental Witness Statements and the three accompanying Declarations, Doc. #66. In the alternative, Airstream asks the Court to disregard the Notice. It notes that S.D. Ohio Civ. R. 7.2(d) requires all evidence supporting a motion to be filed with that motion. By waiting until after Airstream had filed its Response to the Motion to

Certify Rule 23 Class, Plaintiffs deprived Airstream of the opportunity to respond to the Declarations.

In response to Airstream's motion, Plaintiffs have indicated that, because they believe that, even without these three Declarations, they have submitted sufficient evidence to support their Motion to Certify Rule 23 Class, they do not object should the Court deem it inappropriate to consider the untimely Declarations. Doc. #76.

When evidence supporting a motion is untimely filed, the Court may either strike such evidence or disregard it. *Wicker v. Lawless*, 278 F. Supp. 3d 989, 1001-02 (S.D. Ohio 2017). The undersigned has found that the appropriate remedy is to simply disregard the evidence. *See Johnson v. Wolgemuth*, 257 F. Supp. 2d 1013, 1024 (S.D. Ohio 2003). As such, the Court SUSTAINS Airstream's Motion, Doc. #66, but will simply disregard the Declarations instead of striking them from the record.

Date: July 19, 2019



WALTER H. RICE
UNITED STATES DISTRICT JUDGE